

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Policies Regarding Mobile Spectrum Holdings	)	WT Docket No. 12-269
	)	
	)	

**COMMENTS OF  
THE AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (“Ad Hoc”) hereby responds to the Commission’s request for comments in the Notice of Proposed Rulemaking captioned above.<sup>1</sup>

As substantial, geographically-diverse consumers of wireless services nationwide, Ad Hoc members are uniquely qualified to provide an unbiased and informed perspective on the state of competition in the wireless marketplace. They are also disproportionately harmed by any diminution in competition caused by further concentration in the wireless market. In addition, as enterprise customers increasingly rely on wireless communications to meet their mission-critical communications needs, they would be disproportionately affected if wireless carriers obtain spectrum-based market power that can be leveraged to the detriment of competition in adjacent markets, such as the markets for communications equipment, wireless applications, information services, and

---

<sup>1</sup> *Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, Notice of Proposed Rulemaking, FCC 12-119 (rel. Sept. 28, 2012), 77 Fed. Reg. 61330 (“*NPRM*”).

Internet content. Enterprise customers are concerned not only about the negative impact such leverage would have on the ability of customers to use the technologies and products that come to market but also the damage such leverage can do by suppressing innovation and the development of new technologies in those adjacent markets.

For these reasons, Ad Hoc supports the Commission's efforts in this docket to review – and consider modifications to – the method by which the Commission evaluates concentration in mobile spectrum holdings.

The members of Ad Hoc are among the nation's largest and most sophisticated corporate buyers of telecommunications services; sixteen of Ad Hoc's members are "Fortune 500" companies, including nine of the "Fortune 100." Committee members come from a broad range of industry sectors (including chemical and automotive manufacturing, financial services, insurance products, logistics and package delivery, data storage and management, and information technologies) and maintain tens of thousands of corporate premises in every region of the country. They estimate their combined spend on communications services at between two and three billion dollars per year.

## **I. NEW RULES MUST PROTECT AND PROMOTE COMPETITION**

The apparent goal of the instant NPRM is to introduce added "certainty, transparency, and predictability" into the Commission's rules and policies governing spectrum holdings for those contemplating investment and transactional activities involving spectrum.<sup>2</sup> The Commission must walk a fine line when it adopts new rules

---

<sup>2</sup> NPRM ¶ 15.

and policies in order to ensure that they minimize market concentration and maximize market competition without hindering or discouraging appropriate investment in the spectrum market. But the Commission must ensure that it does not pursue the benefits of “certainty, transparency and predictability” for the relatively small segment of the economy that engages in spectrum transactions to the detriment of other policy goals, i.e., robust wireless competition, that benefit all the other firms in the US economy.

Wireless services are an increasingly important component of both mass market and enterprise customer telecommunications purchases. While there may be some degree of substitutability between wireline and wireless services for mass market customers, that scenario is less true for enterprise customers whose needs may not always be met by wireline services (e.g., “road warrior” employees who need connectivity at changing locations). As a result, the availability of competitive alternatives among wireless vendors is of great importance to enterprise customers, particularly given the lack of any meaningful regulation of wireless carriers’ market behavior or pricing by the Commission.

Changes to the rules and policies governing the ability of carriers to buy, sell, and amass scarce spectrum resources must be carefully crafted to ensure that the “certainty, transparency and predictability” injected into the system works to the advantage of customers and potential competitors as well as the largest players in the market today.

## **II. WIRELESS MARKETS HAVE BECOME INCREASINGLY LESS COMPETITIVE OVER THE PAST DECADE**

The Commission itself has recognized that the market for wireless services is highly concentrated and becoming increasingly less competitive every year. The

NPRM observes that in December 2003, the top six carriers controlled 78% of the market but by December 2009, concentration had increased; a larger percentage of the market was controlled by a smaller number of carriers with the top four carriers accounting for 88% of the market.<sup>3</sup> The situation has not improved since then. It has, in fact, deteriorated. By year end 2011, concentration had increased to the point where service to 90% of the market – or almost 300 million of the 331 million estimated wireless subscribers – was carried over the facilities of only four carriers. (See Table below.<sup>4</sup>)

	2011 Year End Subs per Carrier Annual Reports	% of Total Subscribers
	(in thousands)	
AT&T	103,247	31%
Verizon Wireless	107,798	33%
Sprint Nextel	55,021	17%
T-Mobile	33,200	10%
<b>TOP FOUR CARRIERS</b>	<b>299,266</b>	<b>90%</b>
Total Wireless Subs reported by CTIA	331,600	

### **III. NEW RULES MUST PROTECT COMPETITION IN ADJACENT MARKETS FROM THE ANTI-COMPETITIVE OPPORTUNITIES AND INCENTIVES IN A CONCENTRATED WIRELESS MARKET**

Recent and ongoing proceedings at the Commission demonstrate some of the problems that the less-than-competitive market structure for wireless services

<sup>3</sup> NPRM ¶ 14.

<sup>4</sup> Carrier-specific year end data includes counts of both wholesale and retail subscriber as reported in each of the identified carrier's 2011 Annual Reports. Year-end wireless subscribers taken from CTIA Press Release dated 4/13/2012: *CTIA-The Wireless Association® Semi-Annual Survey Shows Significant Demand by Americans for Wireless Broadband*, CTIA (Apr. 13, 2012), <http://ctia.org/media/press/body.cfm/prid/2171>.

has produced over time. In 2010, for example, the Commission found it necessary to initiate a wireless “bill shock” rulemaking which ultimately resulted in the wireless carriers voluntarily agreeing to alert mass market customers when they were about to become subject to overage charges. In a well-functioning competitive market, customer displeasure – not the threat of Commission regulation – would have solved this problem.<sup>5</sup>

Enterprise customers are as vulnerable to market power-based abuses by wireless carriers as are mass market customers. The complex and interrelated nature of enterprise customers’ purchases of telecom services increase the carriers’ ability to leverage spectrum-based market power from wireless markets into adjacent markets. Carriers can, for example, use traditional tying arrangements when enterprise customer purchase the wireline, IT or other services offered by the largest wireless carriers’ affiliates or when customers purchase wireless service peripheral products (like equipment or applications). The Commission’s own inquiry into whether and how to impose interoperability requirements in the 700 Mhz band elicited discussion of some of the problems inherent in this market.<sup>6</sup> See, for example the discussion of the monopsony

---

<sup>5</sup> See discussion of the agreed upon voluntary rules in Timothy Lee, *Under FCC pressure, mobile carriers adopt “bill shock” warnings*, Ars Technica (Oct. 17, 2011), <http://arstechnica.com/tech-policy/2011/10/under-fcc-pressure-mobile-carriers-adopt-bill-shock-rules/>. See also *Empowering Consumers to Avoid Bill Shock; Consumer Information and Disclosure*, CG Docket Nos. 10-207, 09-158, Notice of Proposed Rulemaking, 25 FCC Rcd 14625 (2010).

<sup>6</sup> *Promoting Interoperability in the 700 MHz Commercial Spectrum*, WT Docket No. 12-69, Notice of Proposed Rulemaking, 27 FCC Rcd 3521 (2012) (“700 MHz Commercial Spectrum Rulemaking”).

purchasing power of AT&T and Verizon in the market for wireless handsets in the attachment to U.S. Cellular's Reply comments in that docket.<sup>7</sup>

### **CONCLUSION**

In view of the foregoing, Ad Hoc urges the Commission to consider the end user impacts and competitive implications of any new rules and policies applicable to mobile spectrum holdings. The Commission's goal must be not only to add "certainty, transparency, and predictability" into the Commission's rules and policies but also to ensure a vibrantly competitive market for wireless services that protects the interests of end users.

Respectfully submitted,

**AD HOC TELECOMMUNICATIONS  
USERS COMMITTEE**

By: Colleen Boothby

Susan M. Gately  
SMGately Consulting, LLC  
84 Littles Avenue  
Pembroke, MA 02359  
781-679-0150

Economic Consultant

Colleen Boothby  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, NW, Ninth Floor  
Washington, D.C. 20036  
202-857-2550

Counsel for  
AdHoc Telecommunications Users  
Committee

November 28, 2012

---

<sup>7</sup> See Reply Comments of United States Cellular Corporation, WT Docket No. 12-69 (filed July 16, 2012), Attachment: Lee L. Selwyn and Colin B. Weir, Economics and Technology, Inc. *Interoperability and Spectrum Efficiency: Achieving a Competitive Outcome in the US Wireless Market* at 31.